

**REMARKS**

The application has been amended. The specification has been amended to include the priority data, and to replace the title with a rewritten title. Also, claims 1, 8, 12, 13 and 17 have been amended and claim 11 has been canceled. In particular, claim 1 has been amended to include subject matter from canceled claim 11. Also, Claim 8 has been amended to clarify that projecting ring 39 of the cap body, which is for reducing surface contact between the cap body and plug seal, is a different element from depending projection 42 of the cap body. Moreover, the dependencies of claims 12 and 13 have been changed to depend from claim 1. Finally, claim 17 has been amended to ensure the proper understanding of applicant's original term "locked open position".

**Objections to the Specification**

The Examiner has objected to the disclosure because the priority data was not in the first line of the specification. Applicant has now amended the specification to include the priority data immediately after the title.

**Claim Rejections Under 35 U.S.C. §112, Second Paragraph**

The Examiner has rejected claim 17 under 35 U.S.C. §112, second paragraph because the Examiner alleges that it cannot be determined what is a "locked open position".

Applicant has amended claim 17 to clarify that the locking arrangement permits the cap assembly to be in a locked position, while still maintaining the container in communication with the environment surrounding it. The amendments to claim 17 are non-narrowing and have been made to ensure the proper understanding of applicant's original term "locked open position".

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**Claim Rejections Under 35 U.S.C. §102**

**U.S. Patent Application No. 2004/0108294 A1 (Hereinafter “Bloom”)**

The Examiner has rejected claims 1-7 and 11-20 under 35 U.S.C. §102 (e) as allegedly being anticipated by Bloom. In particular, the Examiner states that Bloom discloses a cap assembly including a cap body 36 having a central orifice, a plug seal 30 having flanges 50, an annular groove (referring to FIG. 6) and tabs on a bottom surface of the plug seal.

Submitted herewith is a Declaration of Prior Invention under 37 C.F.R. §1.131, signed by the inventor. This Declaration establishes conception of the invention in the United States at a date prior to August 12, 2002, the earliest effective filing date of the Bloom reference. Therefore, the Bloom reference is not an effective prior art reference for use against the present invention.

In view of the §1.131 Declaration, as well as the amendments and remarks presented herewith, Applicant respectfully submit that independent claim 1, as well as depending claims 2-7 and 12-20 are patentable over Bloom. Claim 11 has been canceled, thereby obviating this rejection.

**U.S. Patent No. 3,924,772 to Magnani (Hereinafter “Magnani”)**

The Examiner has further rejected claims 1-3, 5, 7, 11-16, 19 and 20 under 35 U.S.C. §102(b) as allegedly being anticipated by Magnani. In particular, the Examiner states that Magnani discloses a cap assembly including a cap body 1 having a central orifice, a plug seal 8 having flanges 9, and an annular groove 10.

Claim 1 now recites that the undersurface of the cap body includes at least one projecting ring for reducing surface contact between the cap body and the plug seal. As

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mentioned above, projecting ring 39 of the cap body is a different element from depending projection 42 of the cap body. Claim 8 has been amended in order to clarify this.

Magnani fails to disclose a projecting ring on an undersurface of a cap body for reducing surface contact between the cap body and an underlying seal. Since Magnani fails to disclose each and every element of the invention, as presently claimed in claim 1, Magnani does not anticipate claim 1.

Furthermore, the Magnani reference does not appear to suggest any sort of projection between a cap body and an underlying seal other than element 9, which is located on the upper portion of stopper 8, and which fits into hole 2 in ring-nut 1. Element 9 is for the purpose of effecting removable engagement of the stopper with the ring-nut, and has nothing to do with reducing surface contact between the ring-nut and stopper. See, for example, column 2, lines 65-68 through column 3, lines 1-3 of the Magnani reference.

In summary, Magnani fails to disclose or suggest the arrangement recited in independent claim 1, as amended. Withdrawal of the rejection of claim 1, as well as claims 2, 3, 5, 7, 12-16, 19 and 20, which depend therefrom, is respectfully requested. Claim 11 has been canceled, thereby obviating this rejection.

**U.S. Patent No. 4,747,500 to Gach, et al. (Hereinafter "Gach")**

The Examiner has also rejected claims 1-4, 14-16, 19 and 20 under 35 U.S.C. 102(b) as allegedly being anticipated by Gach. The Examiner states that Gach discloses a cap assembly including a cap body 160 having a central stepped orifice, a plug seal 180 having flanges 182, and an annular groove 184.

Gach fails to disclose a projecting ring on an undersurface of a cap body for reducing surface contact between the cap body and an underlying seal. Since Gach fails to disclose all of

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the elements the claimed invention as arranged in claim 1, Gach does not anticipate the present invention. Furthermore, there is no suggestion in Gach to provide a cap body with a projection of any kind for engagement with an underlying seal.

Moreover, Gach fails to disclose or even suggest the inventive aspect of independent rotation of a cap body and underlying seal upon removal of the cap assembly from the container. For example, at column 2, lines 6-13, Gach discloses that means are provided at the underside of the cap which permits turning movement of the cap relative to the seal on a container in the closing direction, but act to engage and tear the seal if an effort is made to move the cap in an opening direction. Therefore, this reference, as a whole, is directed to a cap assembly with a destructible seal, which is different from the present invention.

In summary, Gach fails to disclose or suggest the arrangement recited in independent claim 1, as amended. Therefore, withdrawal of the rejection of claim 1, as well as of claims 2-4, 14-16, 19 and 20, which depend therefrom, is respectfully requested.

#### **Claim Rejections Under 35 U.S.C. §103**

The Examiner has rejected claims 7-10 under 35 U.S.C. §103(a) as allegedly being obvious over Magnani or Gach, et al. in view of U.S. Patent No. 4,462,502 to Luenser, et al. (hereinafter “Luenser”) or U.S. Patent No. 4,423,821 to McIntosh. In particular, the Examiner states that neither Magnani nor Gach disclose the plug seal including an annular groove and the top wall of the cap body including a projection to be received in the groove. However, the Examiner alleges that Luenser or McIntosh teach a plug seal including an annular groove and a top wall including a projection to be received in the groove.

Claims 7-10 are dependent upon claim 1. As set forth above, claim 1 is patentably distinct over the primary references. The remaining references fail to fill the deficiencies of the primary references. Therefore, claims 7-10 are similarly patentable.

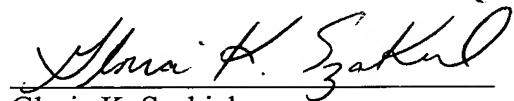
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**Summary**

Applicant has responded in full to the present Office action. It is believed that all of the claims of the present invention are patentable over the cited references, either alone or in combination. Favorable action thereon is respectfully solicited.

Should the Examiner have any questions or comments concerning this Response, the Examiner is respectfully invited to contact the undersigned agent at the telephone number set forth below.

Respectfully submitted,

  
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